

SENATE BILL 3122
By Leatherwood

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 6, Part 70, relating to elementary and secondary education, so as to recognize parental authority and control over children's education and upbringing; to provide for written parental consent and school system disclosure concerning certain types of student assessments; to provide for disclosure of information regarding student records; to provide for security and restricted release of student records; to limit the contents of permanent student records; to provide for parental inspection and review of student records; to provide for challenges to the contents of student records; to regulate student exposure to certain types of assessments, surveys, and recorded material; to provide for adoption of local policies and procedures; to provide for notice to parents; to provide for withholding of state funds from a school system for noncompliance; to exclude application to reports of child abuse; to provide for civil actions; and to provide for applicability to students eighteen (18) years of age and older.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 70, is amended by Sections 2 through 12 of this act as new Sections 49-6-7003 and 49-6-7013.

SECTION 2. The general assembly recognizes that parents possess primary authority and control over the upbringing and education of their children, including without limitation academic, emotional, medical, psychiatric, mental health, psychological, and social matters.

SECTION 3.

(a) Any instructional material provided by a local school system or school, or supplied to a local school system or school by any other entity, including without limitation teachers' manuals, films, tapes, computer programs and networks,

technological instructional materials, assessments, or other supplemental instructional material, and any material which is to be used, viewed by, or made available to students, shall be made available by the school system at a reasonable time for parental inspection, review, and copying upon request of a parent or guardian of a student, provided that any such copies so made shall be only for the personal use of the parent or guardian.

(b) No state department or agency, local school system, or any officer, agent, or employee thereof shall require a student as part of any curriculum or educational program to submit to any psychological, psychiatric, mental health, or psychometric examination, testing, treatment, survey, analysis, assessment, or evaluation without the prior express written consent of the parent or guardian of the student for each such incident or course of treatment and notice to the parent or guardian of his or her right to be present or on the premises during the same.

(c) Upon request of a parent or guardian of a student, a local school system shall be required, in relation to any curriculum and in relation to any screening, observation, or assessment of a student for which consent is required pursuant to subsection (b) of this section, to provide to the parent or guardian a written statement of:

(1) The purpose of the curriculum or of the screening, observation, or assessment and what a screening, observation, or assessment is designed to measure;

(2) Whether and how that purpose is related to cognitive instruction or to objectives which describe changes in a student's interests, attitudes, values, and the development of appreciations and adequate adjustment;

(3) The rationale for scoring and standards of evaluation; and

(4) Types of prescribed treatment or educational plans which may result from a screening, observation, or assessment.

SECTION 4.

(a) Each local school system shall, within ten (10) days after a student's registration, provide to a parent or guardian of a student attending a school within that school system written disclosure of the types of individual student records routinely maintained by the school, the subject matters to be included with such records, the means by which the information will be obtained, the purposes for which the information is needed, the identity of those persons who will have routine access to the information, and the means by which the parent or guardian may grant permission for other persons to have access to or examine such records.

(b) All individual student records, including paper files, microfilm, microfiche, and electronic databases, shall be stored and maintained in such a manner as to prevent access to the same, either physically or electronically, by anyone other than the principal of the school attended by the student or by local school system employees designated by the principal.

(c) Except as provided by this subsection, no local school system, or any officer, agent, or employee thereof shall release any individual student record or any part thereof without prior written consent of a parent or guardian to anyone other than a parent or guardian of the student or local school personnel authorized pursuant to subsection (b) of this section. Student records shall be maintained within the local school system wherein the student is registered, and the contents thereof shall not be released or transferred electronically or otherwise beyond the local school system wherein the student is registered, other than in the aggregate for attendance reports without identification of any individual. The contents of individual student records shall not become part of any database used for purposes of census reports, academic achievement reports, participation in government programs, or job placement programs, other than in the aggregate for reports made only to the state or its agencies or departments without identification of any individual.

(d) No record or notion of any student's alleged criminal activity, criminal arrest, or criminal conviction shall be placed in any permanent student record; provided, however, that such information may be maintained in a separate file to be made available to school administrators and teachers having responsibility and governance over such a student, and the same shall be available to a parent or guardian of the student pursuant to the provisions of subsection (e) of this section.

(e) Each local school system shall, upon request of a parent or guardian of a student, make available for inspection, review, and copying at a reasonable time all individual student records regarding that parent's or guardian's child.

(f) Upon inspection of a student record as provided by subsection (e) of this section, a parent or guardian of a student may contest the accuracy, completeness, or relevance of the contents of a student record by giving to the principal of the school attended by the student written notice of a requested change to the record, specifying what information is being challenged and the correction, supplement, or deletion desired. The principal or his or her designee shall have ten (10) days, excluding Saturday, Sunday, and legal holidays, from receipt of such notice to acknowledge the same in writing. The principal or his or her designee shall promptly review the record and the requested changes thereto and shall either comply with the request in whole or in part or shall deny the request, and the decision shall be communicated promptly in writing to the parent or guardian. If the request is granted in whole or in part, then the record shall be changed accordingly. If the request is denied in whole or in part, then the requested but denied change shall be placed and maintained separately in the student record.

SECTION 5. No state department or agency, local school system, or any officer, agent, or employee thereof shall subject a student, as part of any curriculum or educational program, to participation in a survey, analysis, or evaluation which would require disclosure by the student of information about the student or the student's immediate family concerning:

- (1) Political affiliations or philosophies;
- (2) Mental or psychological problems;
- (3) Sexual behavior, attitudes, and orientations;
- (4) Illegal, antisocial, self-incriminating, or demeaning behavior;
- (5) Critical appraisals of other individuals or institutions with whom respondents have close familial relationships;
- (6) Communications or information subject to the protection of the attorney-client privilege, psychiatrist-patient privilege, or other similar privilege recognized by law;
- (7) Income, other than that information required by law to determine eligibility for participation in a program or for receiving financial assistance under such program;
- (8) Personal values, attitudes, or beliefs; or
- (9) Religious affiliations or beliefs

without the prior express written consent of the parent or guardian of the student.

SECTION 6. No state department or agency, local school system, or any officer, agent, or employee thereof shall require a student, as part of any curriculum or educational program, to view or listen to any film, movie, filmstrip, videotape, audiotape record, or other video or audio recording which contains pornographic material or which has been assigned a rating of "X", "NC-17", or "R" by the Motion Picture Association of America, and such recordings shall not be used by a school system as part of any student curriculum or educational program.

SECTION 7.

(a) Each local board of education shall, no later than December 31, 1996, adopt policies and guidelines for implementing such policies concerning the use and administration of any psychological, psychiatric, or psychometric examination, testing, treatment, or survey for which parental or guardian consent is required by subsection (b) of Section 3 of this act or by Section 5 of this act and concerning the form, content, and method of obtaining the written consent required by subsection (b) of Section 3 or by Section 5. Such policies and guidelines shall provide for alternative assignments or

activities for students whose parents or guardians have refused consent and shall provide that such alternative assignments shall have equal academic credit as that for which consent was refused and shall not be punitive in content or length.

(b) Prior to the adoption of policies and guidelines pursuant to subsection (a) of this section, the local board of education shall provide an opportunity to receive recommendations and comments from board members, school system personnel, parents of students enrolled in schools with the school system, and members of the public.

SECTION 8. Each local school system shall, upon a student's registration, provide to a parent or guardian of a student attending a school within that school system written notice of the provisions of this act. Such notice shall be clearly identified as "Notice of Certain Parental Rights and Requirements for Informed Consent", and receipt of the same shall be acknowledged in writing by the parent or guardian and returned to the school for placement in the student's permanent records.

SECTION 9. In the event a local school system shall fail to comply with any provision of this act, the state board of education shall withhold from the local school system all of the state contributed funds allotted to the local system until full compliance is made by the local system. The state board shall, before withholding funds, notify the local system of its intention and state the reasons for such action. The board of the local system shall be entitled to a hearing before funds are withheld, provided that the local system requests a hearing within thirty (30) days from receipt of notification. If the local school board feels itself aggrieved by the final decision of the state board following the hearing, the local board shall have the right to obtain judicial review of the decision, on the record made before the state board, by filing an appeal in the chancery court of the county of the local system affected. The appeal shall plainly specify the decision being challenged, the questions in dispute, the decision of the state board, the relief sought by the local board, and the contentions of the local board. The appeal shall be based upon the record as a whole established at the time of the hearing before the state board. A transcript of

the testimony and other evidence adduced before the state board at the time of such hearing shall be prepared and certified as true and correct by the commissioner of education and filed in the court within thirty (30) days after date of service of a copy of the appeal upon the commission or within such other time as the court may allow. The decision of the state board on appeal shall not be set aside if based upon any evidence in the record, considering the record as a whole. The court may, in its discretion, whether or not prayed for in the appeal, remand the matter for future proceedings or findings on such directions or terms as may be specified in the order of the court. Proceedings for review of the final judgment of the court shall follow the same course which is now or may hereafter be prescribed for other actions in the chancery court. No funds shall be withheld until all appeals are exhausted. Any local school system which feels aggrieved by any decision of the state board shall have the right to appeal under the provisions of this section.

SECTION 10. The provisions of this act shall not be construed to prohibit reports of child abuse.

SECTION 11.

(a) Except as otherwise provided by Section 10 of this act, any parent or guardian injured by the breach of any duty imposed by the provisions of this act may bring an original action in chancery court for damages or equitable relief, any other provision of law to the contrary notwithstanding, and the amount of any damages awarded shall be determined by the enlightened conscience of a fair and impartial jury.

(b) No action pursuant to subsection (a) of this section in which a local school system or officer, agent, or employee thereof is a defendant shall be brought until more than ninety (90) days after the aggrieved parent or guardian has filed written notice of the grievance and the substance thereof with the local school board. Upon receipt of any such written notice, the local board shall cause the matter to be investigated and shall make findings and take such remedial action as it deems necessary and

appropriate, if any, and the findings and action of the board shall be reported in writing to the aggrieved parent or guardian within ninety (90) days of the filing of the grievance.

SECTION 12. For purposes of this act, whenever a student attains eighteen (18) years of age, the provisions of this act otherwise applicable to a parent or guardian of a student shall apply to the student in lieu of a parent or guardian.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 6, Part 70, relating to elementary and secondary education, so as to recognize parental authority and control over children's education and upbringing; to provide for written parental consent and school system disclosure concerning certain types of student assessments; to provide for disclosure of information regarding student records; to provide for security and restricted release of student records; to limit the contents of permanent student records; to provide for parental inspection and review of student records; to provide for challenges to the contents of student records; to regulate student exposure to certain types of assessments, surveys, and recorded material; to provide for adoption of local policies and procedures; to provide for notice to parents; to provide for withholding of state funds from a school system for noncompliance; to exclude application to reports of child abuse; to provide for civil actions; and to provide for applicability to students eighteen (18) years of age and older.

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